

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.179 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KRISHNA KESHAV LABORATORIES LIMITED

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 12/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The following question has been referred for the
opinion of this Court under Section 256(1) of the Income
Tax Act, 1961 (the Act) by the Income Tax Appellate
Tribunal Ahmedabad Bench 'A' at the instance of the

applicant - assessee :

"Whether on the facts, and in the circumstances of the case, the Hon'ble Tribunal was right in law in holding that the expenditure of Rs.2,51,772/- cannot be regarded as having been incurred wholly and exclusively for the purpose of business ?"

2. The Assessment Year is 1982-83 and the relevant accounting period is the Financial Year ended on 31-03-1982. The assessee, a public limited company, wrote off an amount of Rs.2,51,772/- stated to have been incurred on obtaining a lease of land and towards purchase of incomplete building on the said land, and towards completion of the said building. The case of the assessee is that the property was owned by one Dr. (Mrs.) L.V. Iyer, wife of one Mr. P.V.R.N. Iyer, who was General Manager of the assessee - Company. The assessee entered into an agreement for executing a Deed of lease and an agreement for sale of property with Mrs.Iyer for a sum of Rs.1,92,000/-. On the date of execution of the agreement i.e. on 02-01-1978 a sum of Rs.15,000/- was paid as earnest money by the assessee to Mrs.Iyer. The parties entered into a supplementary agreement on 04-01-1978 whereunder the possession was taken over by the assessee from Mrs.Iyer after paying a further sum of Rs.85,000/- towards the consideration. The supplementary agreement also provided that the execution of the final lease deed and the sale deed had to be made after obtaining the necessary approval under the provisions of Urban Land Ceiling Act, 1976. It appears that Mrs.Iyer demanded a further sum by letter dated 24-02-1979 and the assessee paid Rs.22,000/- to her. Thus, a total sum of Rs.1,22,000/- came to be paid to Mrs.Iyer. After obtaining the possession, the assessee - Company incurred a sum of Rs.1,29,772/towards repairs, modification or addition to the said bungalow by making payment to the contractors. Thus, the assessee Company incurred a total amount of Rs.2,51,772/- for arranging residence for its General Manager, Mr.Iyer. On 16-12-1980 Mr.Iyer wrote to the assessee - Company expressing his desire to resign. The said letter was put up before the Board of Directors at its meeting held on 29-12-1980 and by a resolution of the said date the Board, after appreciating the long and meritorious services rendered by Mr.Iyer to the assessee, recorded that in view of the voluntary retirement the Board decided to cancel the agreement for lease and sale with Mrs.Iyer, and further that the amount paid to Mrs.Iyer as well as the amount spent on construction of the building

will not be claimed by the assessee from Mrs.Iyer. This total sum was written off, in pursuance of the aforesaid resolution dated 29-12-1980, in the accounting period for the year under consideration.

3. The assessee's claim was rejected by the Assessing Officer as well as by the C.I.T. (Appeals). The Tribunal has upheld the orders of both the lower authorities in the following terms :

"5.4 The cases relied upon by the parties clearly lay down that an expenditure incurred wholly and exclusively for the purposes of the business would be allowable expenditure under the provisions of Sec.37(1). It is also correct that business expediency must be judged from the angle of the business man and not from the angle of the tax collector. It is also not disputed that in the interest of his business a business man can consider to confer benefit or award on his employees as such gesture on the part of the employer may create not only confidence in the employees but also good relations between the employees and the employer. But that all has to be done for the purposes of the business. Mr.Shah is no doubt correct that the word necessarily did not occur in the language of section 37(1) along with the words wholly and exclusively. But that does not mean that the purpose for which expenditure had been incurred is not required to be tested at the alter of business consideration.

5.5 In the instant case Mr.Iyer was entitled to a sum of Rs.1,46,500 on account of bonus/commission, leave salary and gratuity and that fact has not been denied by the assessee. Apart from that Mr.Iyer was given a motor car GRG 741 at the written down value of Rs.34,554, furnitures at W.D.V. of Rs.15,662 and two air conditioners at WDV of Rs.4,670. Looking to these benefits conferred upon the retiring employee who had undisputedly joined the concern of the brothers of the Directors of the assessee

company, further incurring an expenditure of Rs.2,51,772 on the Mehta Park bungalow by giving the sums to its lessor Mrs.Iyer before the expiry of the lease period cannot be regarded as having been incurred wholly and exclusively for the purpose of assessee's business. In this behalf we fully agree with the view of the income-tax authorities and confirm the disallowance of Rs.2,51,772."

4. On behalf of the applicant - assessee it was urged that the same transaction was treated as gift by the revenue authorities and the assessee had succeeded before the Tribunal. That by order of 28-08-1992 rendered in G.T.A. No.29/Ahd/1989 the Tribunal had held that under the relevant provisions of the Gift Tax Act, it was not necessary that the amount in question should represent expenditure and it was enough if certain benefit was conferred provided that the said benefit has been given bona fide for the purpose of business. According to the tribunal, therefore, provisions of Section 5(1)(xiv) of the Gift Tax Act, 1958 were not applicable of the facts of the case. This decision of the Tribunal cannot assist the case of the assessee, because as observed by the Tribunal itself, different considerations would prevail for the purposes of determination of allowability of deduction under the provisions of the Act and the Gift Tax Act.

5. However, what is more material for the present is that the Tribunal as well as the revenue authorities have failed to deal with the entire controversy. Section 37(1) of the Act stipulates that before an expenditure can be allowed to be deducted from taxable income chargeable under the head 'Profits and gains of business or profession' the expenditure has to satisfy the following conditions :

- (i) expenditure should be one which is not of the nature described in Sections 30 to 36;
- (ii) expenditure should not be in the nature of capital expenditure or personal expenses;
- (iii) the expenditure should be laid out or expended wholly and exclusively.

All the authorities, including the Tribunal have

proceeded on the footing that for the purposes of determination of the allowability or otherwise of the claim made by the assessee the only test that was required to be applied was whether the expenditure was incurred wholly and exclusively for the purpose of the business. The other conditions have not even been taken up for consideration.

6. Admittedly, the expenditure was incurred for the purpose of obtaining land on lease and purchase of property as well as modification/addition to the superstructure. Whether such expenditure would be on capital account or not has not been looked into by the Tribunal. Similarly, in the year under consideration the amount has been written off, which was even as per the facts stated by the assessee incurred in January 1978 and February 1979 as well as thereafter. Therefore, it was also necessary for the Tribunal and the authorities to apply their mind to the aspect as to whether the amount was laid out or expended during the accounting period relevant to the assessment under under consideration.

7. The learned advocate for the applicant - assessee initially resisted the course of action suggested by this Court of restoring the matter back to the Tribunal for the purpose of ascertaining full and complete facts, by submitting that these aspects are deemed to have been given up by the Department and no second innings should be provided.

8. The answer to the aforesaid submission is available in the decision of Commissioner of Income-Tax, West Bengal I Vs. Indian Molasses Co. P. Ltd., [1970] 78 ITR 474 (S.C.) wherein the Supreme Court was called upon to determine a similar case but in a slightly converse setting. In the case before the Apex Court the second question in relation to the expenditure was regarding the controversy as to whether the expenditure constituted revenue expenditure or not. There the Tribunal and the authority failed to consider whether the expenditure was laid out or expended wholly and exclusively for the purpose of business of the Company. The Apex Court disposed of the matter by enunciating the law thus :

" The second question raised in the present case, in our judgment, permits an enquiry whether the amount claimed is an admissible allowance under section 10(2)(xv). We are unable to hold that it is restricted to an enquiry whether the expenditure is of a capital nature. The Tribunal

did not consider whether the amount was laid out or expended wholly and exclusively for the purpose of the business of the company. Expenditure is admissible as an allowance under section 10(2)(xv) if all the conditions prescribed thereby are satisfied and is authorised by section 10(4A). We are unable to hold that the question framed and referred excluded an enquiry whether the expenditure was wholly and exclusively laid out or expended for the purpose of the business of the company. Nor are we able to hold that because before the Tribunal stress was not pointedly laid upon the ingredients which enable an expenditure to be claimed and allowed, the question does not arise out of the order of the Tribunal. The matter in dispute before the Tribunal was whether the company was entitled to the allowance under section 10(2)(xv) of the Indian Income-tax Act, 1922. The Tribunal considered whether the amount claimed to have been laid out or expended became expenditure within the meaning of section 10(2)(xv) on the death of Harvey, and whether it was capital expenditure. They did not consider whether the expenditure was laid out or expended wholly and exclusively for the purpose of the business of the company. Since the Tribunal gave no finding on this part of the case, we are unable to answer the question on the materials placed before us.

The High Court was, in our judgment, in error in refusing to allow the argument to be raised that the requirements of section 10(2)(xv) were not satisfied, and the expenditure on that account was inadmissible.

Two courses are now open to us : to call for a supplementary statement of the case from the Tribunal; or to decline to answer the question raised by the Tribunal and to leave the Tribunal to take appropriate steps to adjust its decision under section 66(5) in the light of the answer of this court. If we direct the Tribunal to submit a supplementary statement of the case, the Tribunal will, according to the decisions of this court in *New Jehangir Vakil Mills Ltd. v. Commissioner of Income-tax*, [1959] 37 I.T.R. 11; [1960] 1 S.C.R. 249 (S.C.); *Petlad Turkey Red Dye Works Co. Ltd. v. Commissioner of Income-tax*, [1963] 48 I.T.R. (S.C.) 92; [1963]

Supp. 1 S.C.R. 871; and Keshav Mills Co. Ltd. vs. Commissioner of Income-tax, [1965] 56 I.T.R. 365; [1965] 2 S.C.R. 908 (S.C.) be restricted to the evidence on the record and may not be entitled to take additional evidence. That may result in injustice. In the circumstances, we think it appropriate to decline to answer the question on the ground that the Tribunal has failed to consider and decide the question whether the expenditure was laid out or expended wholly and exclusively for the purpose of the business of the company and has not considered all appropriate provisions of the statute applicable thereto. It will be open to the Tribunal to dispose of the appeal under section 66(5) of the Income-tax Act, 1922, in the light of the observations made by this court after determining the questions which ought to have been decided." (emphasis supplied)

9. Applying the aforesaid ratio to the facts of the case and adopting the same course the Court feels it would be appropriate to decline to answer the question as the Tribunal has failed to decide the question as to whether the necessary conditions for applicability of Section 37 of the Act have been fulfilled or not. The question is accordingly left unanswered. It will be open to the Tribunal to dispose of the appeal under Section 260(1) of the Act in light of the observations made hereinbefore. In the view that the Court has taken, it is not necessary to set out the contentions raised on behalf of the assessee on merits of the matter and deal with the same.

10. The Reference stands disposed of accordingly.
There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA, J] [H.N.DEVANI, J]

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'Bhavesh'